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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,352	12/02/2003	Daniel Alfonso Nuncz	22533.US	5438

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/727,352	NUNEZ ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "especially" in lines 2 and 13, renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 1 is also indefinite on lines 4 and 5 as it is not seen how the ratio between polyunsaturated fatty acids and antioxidants is changed by only pressing the seeds.

Also the phrase "expeller" is not understood. Applicants are obtaining material, which possibly has been through an extruder or some type of apparatus, but it is not known what the material is.

Also, it is not seen how a partially low-fat flour with a high content of polyunsaturated fatty acids is obtained.

Claims 5, 8 and 10 (line 3) are also indefinite in the use of the phrase "especially" in line two, as above.

Claims 1-11 are indefinite in the use of the phrase "partially low fat flour". It is not known what is considered to be a partial amounts.

Claim 8, on page 13 is indefinite in the phrase "in a mixer and mixed". Applicants should say that the composition is mixed in the mixer. Also, it is not known what "fractioning of the homogenized mixture" means in claim 8, page 13, line 1 and 2.

The method of claim 9 is not understood at all. Also, it is not known as in claim 10 what the sub-product consists of.

In claim 10, step 1, it is not known what is added to what, nor is the fractioning step understood as in line 19.

In claim 11 it is not known what is combined. Also the use of "especially" is indefinite as above.

In claim 5, "four" should be "flour".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vuksan (US 2004/0185129 A1) in view of Coates et al. (WO9962356).

Vuksan discloses process of making a flour product from chia seeds (*Salvia Hispanica* L.) (abstract and page 6 (0086)). The reference discloses that the chia seed is administered as a ground powder. Claim 1 differs from the reference in the use of a pressing stage and claim 2 in the use of an extruder. However, it is well known to press oil seeds in order to obtain oil from seeds, as in sunflower, and safflower oil. The

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particular type of extruder is given weight in a composition claim. Also, Cates discloses that it is known to extract oil from salvia (chia) and that the salvia is ground into flour. It is not clear from this reference if the oil is extracted first from the flour and then the seeds ground into a flour (abstract). However, as it is well known to extract oil from oil seeds, it would have been obvious to lower the content of oil seeds such as chia, and then to grind the seeds into flour as shown by the above references. The ratio of fatty acids to antioxidants is seen to have been changed, since it is known to remove oil from seeds. Nothing new is seen in using low temperatures as in claim 3, as it is well known that heat causes oxidation of the oil and rancidity. Therefore, it would have been obvious to lower the amount of fatty acids in chia seeds by first removing some of the oil in order to make a partially defatted flour.

Claim 4 further requires that the ratio of fatty acids to antioxidants is modified by removing some of the fatty acids. However, this is what removing oil from seed does and nothing new is seen in this. Therefore, it would have been obvious to change the ratio by removing oil which contains fatty acids.

Claims 5, 6 and 7 are to the product whose limitations have been disclosed above. Vulkan discloses 23 g of PUFA's, 21 grams of protein and vitamins and minerals and other ingredients found in chia seeds (page 9, 0053). The amounts and ingredients listed in claim 5 are found to have been inherent in a pressed and extruded product. Vuksan discloses the amounts which have not been extruded. However, it would have been obvious to make a product containing particular amounts from a pressed product since they would have been inherent to the product.

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Claims 8 and 10, 11 further require adding the product of claim 1 to other products such as in enriching flour with the chia product or other products. Coates it al. disclose grinding the seeds into a flour to be used in cookies, breads, nutrition bars, crackers (abstract). Therefore, it would have been obvious to add the chia flour to other products as disclosed by the combined references.

Claim 9 further requires that the food product contain from 1-4 percent of the chia flour. However, it is seen that it would have been within the skill of the ordinary worker to add particular amounts of the flour to other compositions. Therefore, it would have been obvious to use ad particular amounts of a flour to other flours.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Hp 9-17-05


HELEN PRATT
PRIMARY EXAMINER